IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8-10-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.6249 of 2007
and
MP No.1 of 2007

Radha .. Petitioner

vs

1.The Joint Registrar of
Cooperative Societies
Dharmapuri Region
Dharmapuri

2.K.K.349, Dharmapuri District Central
Cooperative Bank Limited
Rep. By its Special Officer
Dharmapuri .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to pay a sum of Rs.6,46,800/- to the petitioner towards the death cum retirement benefits of her husband employed as Manager in the 2nd respondent bank without conducting any enquiry in terms of the show cause notice dated 28.7.1999 and 30.7.2001.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.V.Arun
Additional Government
Pleader for R1
Mr.M.S.Palaniswmy for R2

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ORDER

Seeking a writ of mandamus to direct the respondents to pay a sum of Rs.6,46,800/- to the petitioner towards the death cum retirement benefits of her husband employed as Manager in the 2nd respondent bank without conducting any enquiry in terms of the show cause notices dated 28.7.1999 and 30.7.2001, the petitioner, the wife of an employee in K.K. 349, Dharmapuri District Central Cooperative Bank Limited, has brought forth this writ petition.

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2.The affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

3.The case of the petitioner in short is that her husband S.Arokiasamy, was originally appointed as Attender Manager in Reddihalli Cooperative Society; that he worked at different branches; that he was transferred to Papparapatti Branch, Dharmapuri District, as Branch Manager; that he died on 8.2.1999, leaving behind him the petitioner herein and his children as his heirs; that the petitioner, after the death of her husband, was given a few retirement benefits such as encashment of leave salary and group service insurance scheme amount; but, the retirement benefits such as provident fund, gratuity and other emoluments were not sanctioned to her; that the petitioner made a claim in that regard; that while the matter stood thus, the second respondent issued a show cause notice dated 28.7.1999, stating that when her husband was in service, he sanctioned several jewel loans above the sanctioned limit and thereby, caused monetary loss to the extent of Rs.3,61,077/-; that the petitioner and her children were called upon to pay the amount within seven days; that the petitioner gave a reply on 23.8.1999; that the matter was kept pending without any enquiry; that while the matter stood thus, the petitioner filed WP No.19486 of 1999 on the file of this Court seeking a certiorarified mandamus to quash the notice dated 28.7.1999, wherein an order came to be passed on 10.12.1999 by this Court issuing a direction to the petitioner to put forth her case before the authority concerned; that following the same, two representations were made by her on 20.12.1999 and 7.1.2000; but, no action was taken; that while so, she filed another WP No.6641 of 2000 seeking a direction wherein it was observed that she could approach the authority below; but, nothing has happened; that while the matter stood thus, a second notice has been served upon her on 30.7.2001 stating that the petitioner's husband caused a monetary loss to the tune of Rs.7,99,194/- including the interest thereon, and therefore, they are liable to pay the same; that though a claim was made, the retirement benefits was not settled; and that under the circumstances, she has approached this Court with this writ petition.

4.Advancing the case on behalf of the petitioner, the learned Counsel would submit that in the instant case, the husband of the petitioner Mr.Arokiasamy was employed till his death on 8.2.1999; that during his life time, not even one memo was served on him alleging that there was any monetary loss to the Bank when he sanctioned jewel loan exceeding the limit; that only after 6 months therefrom, the first show cause notice was given, and a reply was also submitted; but, no enquiry was made; that now, it is a matter of surprise to note that despite the orders of the Court in two writ petitions directing the authorities to decide the matter, they have not done so; that now, the second notice has also been given on 30.7.2001 as if the monetary loss had occasioned to the bank to the tune of Rs.7,99,194/-; and that under the circumstances, she has approached this Court.

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5.Added further the learned Counsel that even a reading of the first show cause notice served upon her stating that there was a loss that occasioned to the bank, and it was caused by the petitioner's husband amounting to Rs.3,61,077/-, would indicate that no particulars worth-mentioning were given; that under the circumstances, the show cause notice itself is nothing but a make belief affair; that apart from that, all the promissory notes executed by the respective persons, who have obtained loans, were very well available; that if any excess amount was actually obtained by them, there was all possibility for the bank to proceed against them, but not done so; that all these proceedings were initiated without any basis whatsoever; that the petitioner and her children who are nothing to do and who have no knowledge about the loan transaction, are now called upon to pay; that they are not liable to pay on the grounds that not even one notice was served upon the employee during his life time; that the show cause notice does not speak about any particulars which could be replied; that under the circumstances, it is not a fit case where the authority could make a claim, and hence, a direction should be given to the respondents to settle the retirement benefits.

6.Contrary to the above contentions, the learned Counsel for the second respondent bank would submit that it is true that during the life time of Arokiasamy, no show cause notice was issued; that since it was detected only thereafter, the first show cause notice was issued on 28.7.1999 giving all particulars that he has sanctioned the loan exceeding the limit, and thus, there was a loss that occasioned to the bank, to the tune of Rs.3,61,077/-; that though the said employee died, the bank has powers to proceed against his legal representatives to make good the loss; that an enquiry was conducted; that the enquiry would reveal that they were actually liable to pay Rs.7,99,194/-; that following the enquiry, the present notice has been issued; that further, the petitioner, who has no case and who is liable to make the payment, has come forward with two writ petitions; that both the writ petitions in WP Nos.19486 of 1999 and 6641 of 2000 were also dismissed by this Court directing her to put forth the submissions before the authority below; but, they have not done so; that now, orders have been passed that they are liable to pay; that apart from that, A.R.C. proceedings is also pending, and hence, the writ petition has got to be dismissed.

7.The Court paid its anxious consideration on the submissions made.

8.This Court is of the considered opinion that it is a fit case where the relief has got to be granted for more reasons than one. It is not in controversy that one Arokiasamy, the husband of the petitioner herein, was employed in the second respondent bank. When he was working as Branch Manager in Papparapatti Branch, he died on 8.2.1999. At the outset, it is to be mentioned that during his life time, not even one charge memo was given making

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allegation that he sanctioned any one jewel loan which was exceeding the sanctioned limit. It is also not in controversy that the first notice served upon the petitioner, was issued on 28.7.1999 i.e., nearly about 5 or 6 months after his life time. A perusal of the first show cause notice does not reveal necessary particulars which could put her on notice as to the date of availing of loan, the amount of sanction, how it exceeded the limit and what was the actual loss that occasioned. On the contrary, it would clearly speak that when those jewels were auctioned, the amount what was brought, was not sufficient to satisfy the loss amount and its interest, and thereby, the loss has occasioned to the bank. It is a matter of surprise to note that how such a notice could be issued or served upon the legal representatives of an employee or how they could be called upon to make it good. If he has exceeded the sanctioned limit, it is understandable that he is liable to answer. But, in the instant case, when the show cause notice is perused, it would make it clear that when the jewels which were originally pledged with the bank, were auctioned, the loss occasioned to the bank, and that was the said amount. This Court is of the considered opinion that such a loss cannot be recovered from an employee.

9.Further, it is to be added that on the basis of such a show cause notice served upon the petitioner, the bank should not have proceeded at all since this Court is of the opinion that the show cause notice itself is bad and liable to be set aside. It is quite natural that she had pleaded no knowledge. It is true that she has nothing to do with the employment of her husband, who was actually the Branch Manager of Papparapatti Branch of the second respondent bank. Now, calling upon the petitioner to answer certain things which she had no knowledge at all, is nothing but to pass an order against her. Apart from that, the first notice dated 28.7.1999, fixes the monetary loss at Rs.3,61,077/-. It is noticed that the second notice was issued on 30.7.2001, stating that the monetary loss that occasioned to the bank, was Rs.7,99,194/-. How it happened is a matter of surprise. It is further to be pointed out that the first show cause notice does not speak about any particulars necessary or requisite to a person and that too, to a person who had no knowledge about the excess of the amount sanctioned. Further, nowhere in the show cause notice it is stated that the monetary loss of Rs.3,61,077/- occasioned because of the sanction of the loan exceeding the limit. But, on the contrary, it had occasioned due to the loss that was noticed at the time of the auction of the jewels pledged with the bank. Under the circumstances, though this writ petition is for a writ of mandamus, this Court is of the considered opinion that the show cause notice itself has got to be set aside and the following proceedings have got to be necessarily set aside. Accordingly, they are set aside.

10.In the instant case, the petitioner has to get the retirement benefits, and she is waiting for the past 7 or 8 years. Now, the answer given by the bank, would not satisfy the legal claim made by the petitioner. This Court is of the view that the

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petitioner is consequentially entitled for a writ of mandamus, and hence, a direction is given to the second respondent to give the retirement benefits to which she is actually entitled as per law, as expeditiously as practicable preferably within a period of ten weeks herefrom. Accordingly, this writ petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

1.The Joint Registrar of
Cooperative Societies
Dharmapuri Region, Dharmapuri

2.K.K.349, Dharmapuri District Central
Cooperative Bank Limited
Rep. By its Special Officer
Dharmapuri

1 cc to the Government Pleader, High Court, Madras, Sr. 62180
1 cc to Mr.G. Ethirajulu, Advocate, Sr. 62133
1 cc to Mmr.M.S. Palanisamy, Advocate, Sr. 62282

WP No.6249 of 2007

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